

ASSEMBLY BILL

No. 243

Introduced by Assembly Member Vargas

February 7, 2005

An act to amend Section 10113.2 of the Insurance Code, relating to life insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 243, as introduced, Vargas. Life insurance: viatical settlements.

Existing law generally regulates an agreement, known as a viatical settlement, between a person owning a life insurance policy upon the life of a person with a catastrophic or life-threatening condition and another person by which the policy owner receives anything of value less than the death benefits of the insurance policy in return for an assignment of those benefits. Existing law requires the licensure of a person entering into or soliciting viatical settlements, and imposes specified fees for the issuance and renewal of such a license.

This bill would increase the amounts of those fees, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 10113.2 of the Insurance Code is
- 2 amended to read:
- 3 10113.2. (a) This section applies to any person entering into
- 4 or soliciting viatical settlements pursuant to Section 10113.1.
- 5 (b) (1) No person may enter into or solicit viatical settlements
- 6 pursuant to Section 10113.1 unless that person has been licensed
- 7 by the commissioner under this section. The person shall file an

1 application for a license in the form prescribed by the
2 commissioner, and the application shall be accompanied by a fee
3 of ~~two~~ *three* thousand eight hundred thirty-three dollars ~~(\$2,833)~~
4 ~~(\$3,833)~~. The applicant shall provide any information the
5 commissioner may require. The commissioner may issue a
6 license, or deny the application if, in his or her discretion, it is
7 determined that it is contrary to the interests of the public to issue
8 a license to the applicant. The reasons for a denial shall be set
9 forth in writing.

10 (2) Whenever it appears to the commissioner that it is contrary
11 to the interests of the public for a person licensed pursuant to this
12 section to continue to transact viatical settlements business, he or
13 she shall issue a notice to the licensee stating the reasons
14 therefor. If, after a hearing, the commissioner concludes that it is
15 contrary to the interests of the public for the licensee to continue
16 to transact viatical settlements business, he or she may revoke the
17 person's license, or issue an order suspending the license for a
18 period as determined by the commissioner. Any hearing
19 conducted pursuant to this paragraph shall be in accordance with
20 Chapter 5 (commencing with Section 11500) of Part 1 of
21 Division 3 of Title 2 of the Government Code, except that the
22 hearing may be conducted by administrative law judges chosen
23 pursuant to Section 11502 or appointed by the commissioner, and
24 the commissioner shall have the powers granted therein.

25 (3) Each licensee shall owe and pay in advance to the
26 commissioner an annual renewal fee of ~~one~~ *two* hundred
27 seventy-seven dollars ~~(\$177)~~ *(\$277)*. This fee shall be for annual
28 periods commencing on July 1 of each year and ending on June
29 30 of each year, and shall be due on each March 1 and shall be
30 delinquent on and after each April 1.

31 (4) Any licensee that intends to discontinue transacting viatical
32 settlements in this state shall so notify the commissioner, and
33 shall surrender its license.

34 (c) A viatical settlements licensee shall file with the
35 department a copy of all viatical settlement forms used in this
36 state. No licensee may use any viatical settlement form in this
37 state unless it has been approved by the commissioner. Any
38 viatical settlement form filed with the commissioner shall be
39 deemed approved if it has not been disapproved within 60 days
40 of filing. The commissioner shall disapprove a viatical settlement

1 form if, in his or her discretion, the form, or provisions contained
2 therein, are contrary to the interests of the public, or otherwise
3 misleading or unfair to the consumer. The commissioner may
4 rescind an approval for any reason or on any basis that would
5 have justified initial disapproval. In the case of disapproval or
6 rescission of approval, the licensee may, within 15 days of notice
7 of the disapproval or rescission, request a hearing before the
8 commissioner or his or her designee, and the hearing shall be
9 held within 30 days of the request.

10 (d) Viatical settlements licensees shall be required to disclose
11 or advise any applicant for a viatical settlement, at the time of
12 solicitation for the viatical settlement, of all of the following:

13 (1) Possible alternatives to viatical settlements for persons
14 with catastrophic or life-threatening illness, including, but not
15 limited to, accelerated benefits options that may be offered by the
16 life insurer.

17 (2) Tax consequences that may result from entering into a
18 viatical settlement.

19 (3) Consequences for interruption of public assistance as
20 provided by information provided by the State Department of
21 Health Services and the State Department of Social Services
22 under Section 11022 of the Welfare and Institutions Code.

23 (e) All medical information solicited or obtained by any
24 person soliciting or entering into a viatical settlement is subject
25 to Article 6.6 (commencing with Section 791) of Chapter 1 of
26 Part 2 of Division 1, concerning confidentiality of medical
27 information.

28 (f) The commissioner may adopt rules and regulations
29 reasonably necessary to govern viatical settlements and
30 transactions and shall adopt regulations to address those conflicts
31 of interest that may arise, including referrals by viatical
32 settlement brokers to viatical settlement providers who have
33 patterns of unreasonable payments to viators. This authority
34 includes, but is not limited to, regulation of discount rates used to
35 determine the amount paid in exchange for assignment, transfer,
36 sale, devise, or bequest of a death benefit under a life insurance
37 policy, and regulations restricting the period of time within
38 which a life or disability agent is prohibited from charging or
39 accepting a fee or commission for viaticating a policy previously
40 sold by that agent. In adopting those regulations, the

1 commissioner shall consider the period of time applicable to that
2 prohibition. The prohibition does not apply to group policies or
3 certificates.

4 (g) The commissioner may, whenever he or she deems it
5 reasonably necessary to protect the interests of the public,
6 examine the business and affairs of any licensee or applicant for
7 a license. The commissioner shall have the authority to order any
8 licensee or applicant to produce any records, books, files, or
9 other information as is reasonably necessary to ascertain whether
10 or not the licensee or applicant is acting or has acted in violation
11 of the law or otherwise contrary to the interests of the public. The
12 expenses incurred in conducting any examination shall be paid
13 by the licensee or applicant.

14 (h) The commissioner may investigate the conduct of any
15 licensee, its officers, employees, agents, or any other person
16 involved in the business of the licensee, whenever the
17 commissioner has reason to believe that the licensee may have
18 acted, or may be acting, in violation of the law, or otherwise
19 contrary to the interests of the public. The commissioner may
20 initiate an investigation on his or her own, or upon a complaint
21 filed by any other person.

22 (i) The commissioner may issue orders to licensees whenever
23 he or she determines that it is reasonably necessary to ensure or
24 obtain compliance with this section, or Section 10113.1. This
25 authority includes, but is not limited to, orders directing a
26 licensee to cease and desist in any practice that is in violation of
27 this section, or Section 10113.1, or otherwise contrary to the
28 interests of the public. Any licensee to which an order pursuant
29 to this subdivision is issued may, within 15 days of receipt of that
30 order, request a hearing at which the licensee may challenge the
31 order.

32 (j) The commissioner may, after notice and a hearing at which
33 it is determined that a licensee has violated this section or Section
34 10113.1 or any order issued pursuant to this section, order the
35 licensee to pay a monetary penalty of up to ten thousand dollars
36 (\$10,000), which may be recovered in a civil action. Any hearing
37 conducted pursuant to this subdivision shall be in accordance
38 with Chapter 5 (commencing with Section 11500) of Part 1 of
39 Division 3 of Title 2 of the Government Code, except that the
40 hearing may be conducted by administrative law judges chosen

1 pursuant to Section 11502 or appointed by the commissioner, and
2 the commissioner shall have the powers granted therein.

3 (k) Each licensee shall file with the commissioner on or before
4 March 1 of each year an annual statement in the form prescribed
5 by the commissioner. The information that the commissioner
6 may require in the annual statement shall include, but not be
7 limited to, the data required to satisfy the commissioner's report
8 to the Legislature due on or before December 1, 1994.

9 (l) No person who is not a resident of California may receive
10 or maintain a license unless a written designation of an agent for
11 service of process is filed and maintained with the commissioner.
12 The provisions of Article 3 (commencing with Section 1600) of
13 Chapter 4 of Part 2 shall apply to viatical settlements licensees as
14 if they were foreign insurers, their license a certificate of
15 authority, and the viatical settlements a policy, and the
16 commissioner may modify the agreement set forth in Section
17 1604 accordingly.

18 (m) No person licensed pursuant to this section shall engage in
19 any false or misleading advertising, solicitation, or practice. The
20 provisions of Article 6 (commencing with Section 780) and
21 Article 6.5 (commencing with Section 790) of Chapter 1 of Part
22 2 shall apply to viatical settlements licensees as if they were
23 insurers, their license a certificate of authority or producer's
24 license, and the viatical settlements a policy, and the
25 commissioner shall liberally construe these provisions so as to
26 protect the interests of the public.

27 (n) Any person who enters into a viatical settlement with a
28 viatical settlements licensee shall have the absolute right to
29 rescind the settlement within 15 days of execution of the
30 settlement, and any waiver or settlement language contrary to
31 this subdivision shall be void.

32 (o) A violation of this section is a misdemeanor.